

Are You Ready for Some Football?

By James A. Johnson

Every evening we seat ourselves in front of the television glancing at the headlines in the newspaper and then turn quickly to the sports page. After that, we grab the remote and click on *ESPN*, *Fox Sports Live*, *ESPN Classics*, *ESPN Sports Center*, *DirectTV* or *Xfinity*. If it is a Sunday, Monday or Thursday night in September, October and November there is a game of controlled violence, called football. We read, discuss, view and even vociferously argue sport in America. Most of us perform our jobs in a perfunctory manner, but when it comes time for sports our enthusiasm reaches a fervor level.

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The 2018 Super Bowl is over and fans of the New England Patriots are hurt and somewhat injured by the loss. Now owners, players, coaches and team physicians can focus on real injuries, known as concussions. Concussions, also known as traumatic brain injuries, occur when your brain violently impacts the inside of your skull. Concussions can permanently damage your brain’s ability to think or work. These injuries lead to tort claims and product liability lawsuits against the NFL, high schools, college teams, helmet manufacturers and others involved in the game of football.

Football

Are you ready for some football? This is the rhetorical question every September and at the Super Bowl. Well, yes and no. This controlled violence is still violence, engendering results like retired players who can’t get out of bed without help, migraine headaches, quarterbacks and linemen who can’t raise their arms or tie their shoes. This game has caused suicides, namely Aaron Hernandez, Jovan Belcher, Junior Seau, O.J. Murdock, Kurt Crain, Mike Current, Dave Duerson and Ray Easterling. There was an avalanche of litigation against the NFL, NFL Properties, Riddell Sports Group and others. Approximately 2,500 former players and surviving family members sued the NFL for allegedly distorting and hiding data about concussions. On April 15, 2013, a Denver, Colorado jury found Riddell Inc. liable for failing to warn about concussion dangers. The jury awarded \$11.5 million to a Rhett Ridolfi, a high school student, and found Riddell 27 percent at fault. Ridolfi, a former Colorado high school football player, suffered serious brain injuries

and partial paralysis. The jury assessed \$3.1 million in damages against Riddell.

In 2010 the NFL gave Boston University’s Center for the Study of Traumatic Encephalopathy \$1 million to study the brains of 60 deceased football players.¹ Although all the test results are not in, many showed signs of (CTE) chronic traumatic encephalopathy. CTE is a neurodegenerative disease caused by repeated blows to the head. Do we need to have all of the tested results when we know that the symptoms of CTE are slurred speech, headaches, psychosis and depression? On December 3, 2012, an additional study from Boston University detailed 33 causes of chronic traumatic encephalopathy (CTE) in deceased ex-NFL players. I hope this article will direct the moral compass of the NFL, NFLPA, owners, coaches, general managers and players to action.

National Center for Injury Prevention

According to the National Center for Injury Prevention, it is estimated that as many as 47 percent of all high school football players suffer a concussion each year. Football players who suffer multiple concussions are at risk of suffering permanent brain damage. A few years ago, not one state required that high school and middle school athletes who suffered concussion symptoms receive medical clearance to return to play. According to USA Football, all 50 states now have some form of student-athlete concussion laws in place.²

“The power and tension between intercollegiate athletics and the university has escalated. Football and basketball coaches who are successful often overshadow the institution itself. Money is power.”

One of the purposes of this article is to inform coaches, players, parents, athletic directors and general counsel of the seriousness of the risks of concussions to young people whose brains have not yet fully developed. Every concussion is a brain injury. The effects of this damage range from behavioral and emotional disorders to full-body paralysis.

An excellent resource for comprehensive facts and laws covering youth sports is Law Atlas/The Policy Surveillance Portal/Topics/Maps A-Z/Youth Sports Traumatic Brain Injury Map Laws/Injury and Violence Prevention. It covers such information as specifying requirements when an athlete may return to play and

requiring distribution of some form of TBI/concussion sheet. For example it states:

Every year as many as 300,000 young people suffer concussions or traumatic brain injuries (TBIs), from playing Sports. These injuries can have serious and long term effects, and all states have adopted laws aimed at reducing harm for youth sports TBIs occurring at scholastic activities. This map identifies and displays key features of such laws across all 50 states and the District of Columbia and over time, from 2009 to 2017.³

“Students may not return to athletic activities until they are free of symptoms for a minimum of 24 hours and have been evaluated by and received written and signed authorization to return to activities from a licensed physician.”

Litigation

The power and tension between intercollegiate athletics and the university has escalated. Football and basketball coaches who are successful often overshadow the institution itself. Money is power. These coaches are deities on their campuses and in their respective states. The revenue stream from sports often drives university decision making and conflicts with the values of the university. My point is that university administrators must strike a delicate balance and enforce educational values and at the same time reward winning athletic programs. This balance requires a tightening of the reins on coaches and requiring in their contracts immediate reporting and action in handling allegations of wrongdoing and allegations of crimes. Case in point is the Penn State situation, but I suspect there are other athletic programs with serious problems that have not yet surfaced. A reassessment is in order with new rules to keep coaches input at a minimum in admission policies, discipline and other areas that are purely university business. So with the clarity of hindsight, I implore Athletic Directors, University General Counsel and lawyers in general to accept my challenge and moral assignment and eliminate this cascade of litigation involving educational institutions and athletic programs.

New York State

In 2011 New York passed *The Concussion Management and Awareness Act* (Ch. 496 of the laws of 2011) that became effective July 1, 2012 for all public and charter schools. This Act requires the Commissioner of Educa-

tion, in conjunction with the Commissioner of Health, to promulgate rules and regulations related to students who suffered a concussion or (MTBI) mild traumatic brain injury. These guidelines apply to all public school students who have suffered a concussion regardless of where the concussion occurred.⁴

The law requires that school coaches, physical education teachers, nurses and certified athletic trainers complete a New York State Education Department (NYSED) approved course on concussions and concussion management every two years.

The law also requires that students who suffered or are suspected to have suffered a concussion during athletic activities are to be immediately removed from such activities. Students may not return to athletic activities until they are free of symptoms for a minimum of 24 hours and have been evaluated by, and received written and signed authorization to return to activities, from a licensed physician.

Show Me the Money

For years, there has been a groundswell of talk about whether college players should be paid or profit from their fame before they graduate. This writer answers that question with a resounding no! The reasons are obvious and you cannot make the amateurism argument if you are paying players. Moreover, paying players money raises questions of maintaining the academic integrity of institutions. The National Collegiate Athletic Association (NCAA) president, Mark Emmert, has increased the value of athletic scholarships to cover the *full* cost of attending college.

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In fact, the five wealthiest college football conferences notified the NCAA in October 2014 of their proposals to provide more benefits to athletes under the new governance model. This allows the Big 10, ACC, Big 12, Pac-12 and SEC to pass legislation without the support of the other Division I leagues. These changes would increase benefits to student-athletes including athletic scholarships that will fully cover tuition; guaranteeing multiyear scholarships and allowing former athletes to return to school at any time, and providing long-term health care and insurance to former athletes.⁵

We need to restore authentication to sport and preserve the integrity of competition, which in turn will

foster even greater competition and help to remove the asterisk in front of new records. It appears that National Football League Commissioner, Roger Goodell, has heard my rumblings and message. Affirmative steps are being taken, in earnest, to address player safety, conduct and rule changes.

U.S. District Judge Anita Brody in Philadelphia approved a \$1 billion settlement for NFL players and family members that became effective on July 7, 2017. The revised settlement approved by Judge Brody covers more than 20,000 NFL retirees and is designed to last at least 65 years. It also provides up to \$5 million to individual retirees who develop Lou Gehrig's disease and other profound problems.⁶

Conclusion

The purpose of this article is not to deter participation in football but rather to educate and inform attorneys, athletic directors, coaches, parents and players of the risks and symptoms of concussion. Participation in sports by young people can engender mental and physical toughness, discipline, sportsmanship and leadership qualities. These individual attributes collectively can also provide an advantage in the game of life.

In the final analysis, to inspire true sport and protect the rights of athletes, Grantland Rice, the dean of sports journalists, said it best: *"When the one great scorer comes to mark against your name, he will not write if you won or lost, but how you played the game."*

Endnotes

1. Rich Barlow at www.bu.edu/today/2010/nfl-gives-1m-to-bu-center-for-athlete-brain-study/ (last visited 4-19-18).
2. <http://usafootball.com>—National Center For Injury Protection (last visited 4-19-18).
3. www.lawatlas.org—Choose a Topic—Injury & Violence—Youth Sports Traumatic Brain Injury Laws.
4. The Concussion Management Awareness Act www.nysenate.gov/Legislation.
5. Detroit Free Press, Nation & World, Oct. 2, 2014 at Sec. 9C.
6. <https://nflconcussionsettlement.com> (last visited 4-19-18).

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